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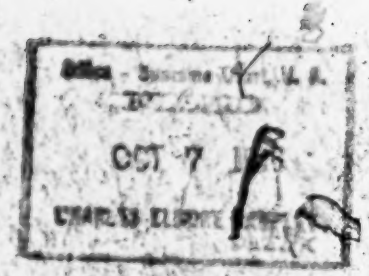

No. 585

In the Supreme Court of the United States

OCTOBER TERM, 1946

THE UNITED STATES OF AMERICA, APPELLANT

v.

LEM HOY, ALIAS LIM HOY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA

STATEMENT AS TO JURISDICTION

In the District Court of the United States for the Southern District of California, Central Division

Criminal No. 18556

UNITED STATES OF AMERICA

v.

LEM HOY, ALIAS LIM HOY

Filed August 29, 1946. Edmund L. Smith, Clerk. By Charles A. Seitz, Deputy Clerk.

STATEMENT AS TO JURISDICTION

In compliance with Rule 37 (a) (1) of the Federal Rules of Criminal Procedure and Rule 12 of the Supreme Court of the United States, as amended, the United States submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the District Court entered in this cause July 30, 1946, dismissing the information.

JURISDICTION

The jurisdiction of the Supreme Court to review by direct appeal the judgment entered in this cause is conferred by the Act of March 2,

1907, 34 Stat. 1246, as amended by the Act of May 9, 1942, 56 Stat. 271, 18 U. S. C., Supp. V, 682, commonly known as the Criminal Appeals Act, and by Section 238 of the Judicial Code, 28 U. S. C. 345.

STATUTES INVOLVED

Section 5 of the Immigration Act of February 5, 1917, c. 29, 39 Stat. 874, 879, 8 U. S. C. 139, provides:

> That it shall be unlawful for any person, company, partnership, or corporation, in any manner whatsoever, to prepay the transportation or in any way to induce, assist, encourage, or solicit, or attempt to induce, assist, encourage, or solicit the importation or migration of any contract laborer or contract laborers into the United States, unless such contract laborer or contract laborers are exempted under the fifth proviso of section three of this Act, or have been imported with the permission of the Secretary of Labor in accordance with the fourth proviso of said section, and for every violation of any of the provisions of this section the person, partnership, company, or corporation violating the same shall forfeit and pay for every such offense the sum of $1,000, which may be sued for and recovered by the United States, as debts of like amount are now recovered in the courts of the United States. For every violation of the provisions hereof the person violating the same

> may be prosecuted in a criminal action for a misdemeanor, and on conviction thereof shall be punished by a fine of $1,000, or by imprisonment for a term of not less than six months nor more than two years; and under either the civil or the criminal procedure mentioned separate suits or prosecutions may be brought for each alien thus offered or promised employment as aforesaid. * * *

Section 5 (g) of the Farm Labor Supply Appropriation Act of February 14, 1944, c. 16, title I, 58 Stat. 11, 15–16, 50 U. S. C. App., Supp. V, 1355 (g), provides:

> In order to facilitate the employment by agricultural employers in the United States of native-born residents of North America, South America, and Central America, and the islands adjacent thereto, desiring to perform agricultural labor in the United States, during continuation of hostilities in the present war, any such resident desiring to enter the United States for that purpose shall be exempt from the payment of head tax required by section 2 of the Immigration Act of February 5, 1917, and from other admission charges, and shall be exempt from those excluding provisions of section 3 of such Act which relate to contract laborers, the requirements of literacy, and the payment of passage by corporations, foreign government, or others; and any such resident shall be admitted to perform agricultural labor in the United States for

such time and under such conditions (but not including the exaction of bond to insure ultimate departure from the United States) as may be required by regulations prescribed by the Commissioner of Imigration and Naturalization with the approval of the Attorney General; and in the event such regulations require documentary evidence of the country of birth of any such resident which he is unable to furnish, such requirement may be waived by the admitting officer of the United States at the point where such resident seeks entry into the United States if such official has other proof satisfactory to him that such resident is a native of the country claimed as his birthplace. Each such resident shall be provided with an identification card (with his photograph and fingerprints) to be prescribed under such regulations which shall be in lieu of all other documentary requirements, including the registration at time of entry or after entry required by the Alien Registration Act of 1940. Any such resident admitted under the foregoing provisions who fails to maintain the status for which he was admitted or to depart from the United States in accordance with the terms of his admission shall be taken into custody under a warrant issued by the Attorney General at any time after entry and deported in accordance with section 20 of the Immigration Act of February 5, 1917. Sections 5 and 6 of such Act shall not apply to the importation of aliens under

this title. No provision of this title shall authorize the admission into the United States of any enemy alien.

Section 5 (g) of the Farm Labor Supply Appropriation Act, 1944, was continued in effect by the First Deficiency Appropriation Act of December 28, 1945, c. 589, Public Law No. 269, 79th Cong., 1st sess., Title I (U. S. Code Congressional Service (1945), p. 622), which provides in pertinent part:

> The authority and funds provided by the Farm Labor Supply Appropriation Act, 1944, as amended and supplemented, are hereby continued through December 31, 1946, to assist in providing an adequate supply of agricultural labor for the production, harvesting, and preparation for markets of agricultural commodities essential to the orderly transition from war to peace and for carrying out the other purposes of said Act, * * *. Agricultural workers may be admitted into the United States to perform agricultural labor in accordance with the provisions of section 5 (g) of said Act during the continuance of this program, notwithstanding any official determination of the cessation of hostilities in the present war.

THE ISSUE AND THE RULING BELOW

The defendant, Lem Hoy, was charged in an information filed in the District Court on June 3, 1946, with having violated Section 5 of the Immi-

gration Act of 1917 in that on or about February 7, 1946, he unlawfully induced, assisted, encouraged, and solicited certain named alien persons to migrate to the United States as contract laborers, such persons not being entitled to enter or migrate to the United States under that law or any other law of the United States, as the defendant well knew. The details of this violation are set forth in a bill of particulars filed by the United States on June 27, 1946, as follows:

On February 7, 1946, the defendant sent a letter (in Spanish) from Redondo Beach, California, to certain alien persons in Mexico which read:

> FEBRUARY 7 OF 1946.
>
> MISTER CAMILO CORTEZ AND YGNACIO CORTEZ: Esteemed friends I give reply to your very attentive (favour) dated the 29 of the past month of January in which you inform me that you are well which makes me very happy with regard to that which you tell me in your letter, that you are very willing to come to help me but that you are afraid; I tell you to come as soon as your receive my letter and it makes no difference if you pass as contraband (smuggle in), as wherever the Immigration catches you I will get you out with a bond. And bring with you another companion because I want three workers. Because to go to Calexico is very far, it is three hundred miles and I do not know the way (road), but that is the most practical as soon as

you arrive in Mexicali find the ranch of a man named J. Jesus Chumasero and there they will inform you of a man who will bring you here to me. (He) charges twenty five dollars (but) it makes no difference what it costs come immediately and I will arrange everything. That is the best information which I can give you therefore come without delay. I presented your remembrances to my father and to the Romero family, and I am extremely grateful that you answered my letter, and that is all I have to say for now. Without more, your friend.

LIM HOY.

Enclosed with the letter was a return envelope bearing defendant's name and California address. Thereafter, on or about February 25, 1946, the aliens entered the United States near Calexico, Imperial County, California.

The defendant moved to dismiss the information on the ground that it did not state an offense because the provisions of the Immigration Act of 1917 excluding contract laborers had been expressly repealed by Section 5 (g) of the Farm Labor Supply Appropriation Act, 1944. In the course of argument on this motion, it was stipulated between counsel that the aliens named in the information were agricultural workers. The District Court thereupon granted the motion to dismiss, not on the broad ground asserted in the motion, but on the ground that the latter statute

exempted agricultural laborers, though not other contract laborers, from the provisions of the 1917 act for the duration of the war and at the time the alleged offense occurred. The court relied for its decision on the codifier's cross-reference notes appearing after the pertinent sections of the 1917 act as they are embodied in United States Code Annotated and which refer to Section 5 (g) of the Farm Labor Supply Appropriation Act as exempting the deportation of farm laborers during the war.[1]

Since the District Court held as a matter of substance that because of the effect of Section 5 (g) of the Farm Labor Supply Appropriation Act, 1944, the information did not charge an offense under Section 5 of the Immigration Act of 1917, it necessarily construed the latter statute upon which the information was founded, and its ruling is subject to review by the Supreme Court on direct appeal. *United States* v. *Borden Co.*,

[1] The notes referred to, apparently taken bodily from Supplement V of the United States Code (1940 ed.), appear after 8 U. S. C. A. 136 (h) and 139 in the 1945 cumulative pocket part of United States Code Annotated and read, successively, as follows:

"Exemption from certain exclusion provisions of this section for native-born residents of North America, South America, Central America, and adjacent islands, coming to the United States to perform agricultural labor for duration of war, see section 1355 (g) of Appendix to Title 50, War."

"Section as inapplicable to importation of farm laborers for duration of war, see section 1355 (g) of Appendix to Title 50, War."

308 U. S. 188, 194–195. See also *United States* v. *Rosenwasser*, 323 U. S. 360.

THE QUESTION IS SUBSTANTIAL

The decision of the District Court that the Section 5 (g) of the Farm Labor Supply Appropriation Act provided, for the period of the war, a complete and unqualified exemption from the proscription of the Immigration Act of 1917 in respect of aliens imported to act as agricultural laborers, regardless of whether the importation was effected pursuant to the conditions of Section 5 (g) and the regulations thereunder, is of manifest importance, for it permits uncontrolled importation of farm laborers, contrary to the national policy expressed in the Immigration Act of 1917 and Section 5 (g) of the Farm Supply Appropriation Act, 1944.

Prior to the war, as evidenced by Section 3, as amended (8 U. S. C. 136 (h)),[2] and Section 5 of the Immigration Act of 1917, there was a well defined national policy against the importation of contract laborers except insofar as such persons might otherwise qualify for admission. To counteract the drain on manpower brought about by the war and the resulting critical shortage of farm labor, Congress enacted Section 5 (g) of the Farm Labor Supply Appropriation Act. That section provides that farm workers from

[2] Section 3 excludes contract laborers from admission into the United States.

other American countries may be admitted "to perform agricultural labor in the United States for such time and under such conditions * * * as may be required by regulations prescribed by the Commissioner of Immigration and Naturalization with the approval of the Attorney General."[3] And it excepts from the exclusion and criminal provisions of the Immigration Act of 1917 such importations as are effected "under this title." This language, and the history of the section as well, show that the importation,

[3] Pursuant to the authority of Section 5 (g), the Commissioner of Immigration and Naturalization, with the approval of the Attorney General, promulgated regulations (8 C. F. R., Cum, Supp. 1943, Pt. 115) prescribing conditions of admission, including requirements that the alien must:

"(a) Submit to the examining immigrant inspector an alien laborer's identification card (Form I-100) prepared prior to embarkation for the United States by the War Food Administrator or his duly authorized representative, or if not in possession of an alien laborer's identification card so issued, shall establish that he is seeking admission as one of a specific group of agricultural workers who are being recruited directly by an employer under conditions which have been approved by the District Director of Immigration and Naturalization of the district in which the alien applies for admission;

* * * * *

"(c) Establish that he is not an enemy alien and that he is in all respects admissible under the provisions of the immigration laws except [the provisions referred to in Section 5 (g) of the Farm Labor Supply Appropriation Act, 1944]."

The regulations also contain specific provisions for fingerprinting and issuance of identification cards and provisions fixing the conditions and duration of the alien's sojourn in the United States.

use, and deportation of alien farm labor are to be strictly supervised. When the act was under discussion in Congress, one of the Senators responsible for its promotion stated (90 Cong. Rec. 864, 865):

> I will say frankly that one reason why the proposal is made to import aliens for laboring purposes is that we are certain they will return to their respective homes. That is the first thing which is made certain. The alien is fingerprinted, photographed, and thoroughly identified. He is then given a medical examination, and kept under Federal control all the time he is in the United States. A part of his wages in retained. In the case of Mexicans it is 10 percent, and in the case of those coming from the West Indies $1 a day is deducted from the wages, sent home, and deposited in a bank to the credit of the individual. We are not in any way interfering with the firmly established national immigration policy. We are strictly enforcing it. * * *
>
> * * * * * *
>
> The handling of aliens in the United States is an expensive operation because it is necessary to keep books on each individual alien. That is done in the first place to insure that he will leave the United States when his time is up. We identify him, we fingerprint him, we make that record of him, and keep track of him all the time.

> The second reason why it is necessary to keep books with him is, as I have heretofore stated, that a part of his pay is deducted and sent back to his home. In the agreement with the foreign country it is provided that he shall receive the prevailing rate of wages in the area where he is employed and, in order to insure that being done, it is necessary to know about the contract which is made with the farmer who employs him. That involves more bookkeeping. Somebody has to keep that record.
>
> We want to be sure that he is deported after he is through with his work. We have to have the record in order to keep the bargain we made with his government that a part of his pay will be sent home.

The statute on its face shows that this control over the temporary migration is to be strictly maintained by (1) regulations governing admission, (2) identification and inspection procedures to assist in supervision of the alien while working in this country, and (3) mechanics for timely deportation.

Since the statute allows importation of farm labor which under the Immigration Act of 1917 would be unlawful, it was, of course, necessary to provide a temporary exemption from the exclusion and criminal provisions of the latter law. However, it was not contemplated, nor can Congress be said to have intended, that such an

exemption should apply where the war-time importation was not effected in compliance with the well-defined and controlled scheme for the emergency importations. As shown above, Congress was concerned that the national policy against importation of alien contract labor should not be defeated, and that any temporary exception to this policy should be safeguarded by rigid administrative control, assuring that the importation and use would be so supervised that deportation would be effected when the need for such labor had ceased. Congress implemented this policy by providing in Section 5 (g) that alien farm workers may be admitted only "for such time and under such conditions * * * as may be required by regulations" and that the exemption should apply only to "importations of aliens under this title." Moreover, when Congress in the First Deficiency Appropriation Act, 1946 (*supra*, p. 3), extended the life of Section 5 (g) through December 31, 1946, it expressly defined the class of aliens who might be admitted in furthering the program of providing an adequate supply of agricultural labor as including only "agricultural workers * * * *admitted* into the United States to perform agricultural labor *in accordance with the provisions of section 5 (g)* * * *." [Italics supplied.] The language of both Section 5 (g) and the extension act, together with the described legislative history, makes it apparent that the exemption is applica-

ble only where the importation is in compliance with the conditjons imposed in Section 5 (g) and the regulations thereunder. Where, as here, there is no pretense of such compliance, it cannot be said that the importation occurred "under this title" or that the laborers were "admitted * * * in accordance with the provisions of section 5 (g)."

The construction placed upon Section 5 (g) of the 1944 act by the District Court ignores the qualifying clauses contained in that section and the extension provision and would (1) divest the Immigration and Naturalization Service of its supervisory functions and place the power to determine admissibility in the hands of aliens and importers, (2) permit importation of aliens in violation of treaties between the United States and Mexico providing for an orderly scheme of migration, including an accounting for wages paid farm workers,[3] and (3) defeat the legislative policy for the prompt return of such laborers when the need for their services ceased.

For the foregoing reasons, it is apparent that the decision of the District Court is erroneous and in derogation of national policy. And the ground advanced by the court for its determination is patently unsound, since it is obvious that the notes referred to by the court were inserted in the code solely for the purposes of cross-reference and did

[3] See Treaty of August 4, 1942, 56 Stat. 1759; revised April 26, 1943, 57 Stat. 1152.

not purport to describe the scope of the exemption under the war-time statute or under what conditions it would be applicable.

Appended hereto is a copy of the oral opinion rendered by the District Court on July 30, 1946.

Respectfully submitted.

J. HOWARD MCGRATH,
Solicitor General.

JAMES M. CARTER,
United States Attorney for the Southern District of California.

U. S. GOVERNMENT PRINTING OFFICE: 1946